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Comments on the Notice of Proposed Rulemaking  
to Reform International Settlements Policy  
Proposed by the Federal Communications Commission (FCC)

The Government of Japan (GOJ) hereby submits the following comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM" (IB Docket No. 98-148)). The comments are not exhaustive and the GOJ may submit additional points in the future, as appropriate.

1. The GOJ welcomes the FCC's proposal to reform the FCC's international settlement policy (ISP) according to the WTO Basic Telecommunications Agreement that has entered into force. The GOJ appreciates the deregulation proposal of not applying the ISP on both routes where the FCC has already authorized international simple resale (ISR) and non-dominant carriers of the WTO member countries, as well as the proposal of other improvements in various procedures.

However, it is regrettable that no fundamental revision was proposed concerning the Bench Mark Order and the Foreign Participation Order, of which the GOJ has pointed out as having serious problems in relation to the WTO Basic Telecommunications Agreement. We would like to point out the problems once again.

2. As we have previously pointed out, the Bench Mark Order has many problems such as:

- 1) It could become a de facto entry barrier to the U.S. market.
- 2) The settlement rates, which should be decided on a commercial basis, are set unilaterally by the U.S. government in relation to entry control.
- 3) Its conformity to the WTO Agreements is doubtful.

The GOJ has been submitting comments on the above concerns since the time of the NPRM. However, to our regret, revisions which were made at the time of rule making, are not sufficient.

3. Even after rule was made, the GOJ has repeatedly requested a further revision to the system on occasions such as the U.S.-Japan

Telecommunications Deregulation Expert Meeting. We acknowledge the effort to improve the Bench Mark Order in the NPRM this time, but the revision was limited part of the Order, and is not sufficient to satisfy our concerns.

4. In response to a question asked by the GOJ concerning the appropriateness of the Bench Mark Order, the U.S. government replied that the entry of Japanese carriers would be approved if they reduced their settlement rates below the standard provided by the Bench Mark Order, which would resolve the problem. However, it is a fact that, at that point, several U.S. carriers affiliated with Japanese carriers had acquired the U.S. government's approval, but their entry were actually obstructed, proving that the Bench Mark Order could become an entry barrier. The reform proposal this time does not include proposals to prevent the recurrence of such a problem.

6. In response to the GOJ's claim that Japanese carriers' entries to the U.S. market were practically rejected, despite legal certification by the U.S. government under the Bench Mark Order, the U.S. government answered that most of the present traffic between the U.S. and Japan is settled below the Benchmark, suggesting that Japanese concerns do not apply to the current situation. However, as mentioned above, it is a fact that the Bench Mark Order acted as a de facto entry barrier to the U.S. market, and the settlement rates which should be determined on a commercial basis are unilaterally set by the U.S. government in relation to entry control, which has forced Japanese carriers to reduce their settlement rates. The presence of the Bench Mark Order could become a barrier for carriers which try to enter the U.S. market in the future. The U.S. government should promptly make a fundamental revision regarding the problem caused by the Bench Mark Order as indicated above, or otherwise withdraw the Order itself.

6. Our comments on individual paragraphs of the NPRM are described below.

(Paragraph 28) The GOJ's claim concerning the problems of the

Bench Mark Order is as mentioned above, but even under the current Order, we demand the U.S. government not unilaterally lower the provided Benchmark standard any further. If the standard is lowered, the routes where the FCC has authorized ISR may have their ISR route certifications revoked for not complying with the lowered Benchmark, or carriers which have already acquired certification in the U.S. market may have their certification revoked. As a result, the carriers may have to suffer unexpected losses or disadvantages such as being deprived of stable business development, and their future prospects may become unfavorable. Also, the link with the revoked certification may force non-U.S. carriers to reduce the settlement rates.

7. (Paragraph 31) "An approach to abolish the regulation for routes which are judged by the FCC as not requiring the regulation" only describes the abolishment of the U.S. domestic regulation. The U.S. government could not demand a reciprocal abolishment of regulation to other countries for the routes of which regulation was abolished by the U.S.

8. (Paragraph 18-24, 39-43) No other developed countries provides regulation of which contents are changed according to the market share in the foreign market. Thus, its rationality and justification is doubtful. Also in the NPRM of the Foreign Participation Order, the criteria for "dominant" is rather vague as pointed out by the GOJ. For example, it is not clear whether resale-based services are added to the facility-based services of the route as a criterion for calculating the market share. Since such lack of transparent criteria may lead to improper and discriminatory treatment against non-U.S. carriers, such regulation should be abolished.

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**To:** Ms. Magalie Roman Salas **Date:** October 16, 1998  
Secretary  
Federal Communications Commission

**Fax #:** (202) 418-0307 **Time:** 3:45 PM  
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**From:** Counselor Junichiro Miyazaki **Pages:** 4, including this page  
Mr. Shinichi Hosono

**Subject:** Submission of Comments

**Message:**

*Attached is the Comments on the Notice of Proposed Rulemaking to Reform International Settlements Policy Proposed by the Federal Communications Commission.*